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UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS. EASTERN DIVISION

IN RE: CHAPTER 13
Case No. 19-30367

Vincent A. Tortorello Judge A. Benjamin Goldgar

Debtor. Hearing Date: January 10, 2020

Hearing Time: 11:00 A.M.

RESPONSE OF DIMON HOMES, LLC TO DEBTOR'S OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES

NOW COMES Dimon Homes, LLC (hereinafter referred to as "Dimon"), a secured creditor herein, by and through its attorneys, Cohen Dovitz Makowka, LLC, and in support of its Response to the Debtor's Objection to Notices of Postpetition Mortgage Fees, Expenses and Charges by Dimon Homes, LLC, states as follows:

- 1. This Court has jurisdiction pursuant to 28 U.S.C. Section 1334.
- 2. On October 25, 2019, Vincent A. Tortorello, the Debtor, filed a petition for relief under Chapter 13 of the Bankruptcy Code.
- 3. Dimon is the owner and holder of a note (the "Note") dated January 27, 2011 in the original principal amount of Twenty-Eight Thousand and One-Hundred Twenty-Five and NO/100ths (\$28,125.00) Dollars executed by Debtor and secured by a mortgage (the "Mortgage") against the real property commonly known as 38569 N. Sheridan Road, Unit 504, Beach Park, Illinois 60099 (the "Property").
- 4. On December 13, 2019, Dimon filed a Proof of Claim in the total amount of \$52,416.09 [Claim No. 5].
- 5. On January 31, 2020, this Court entered an Order Confirming Plan [Dkt. No. 39] confirmed the Debtor's Amended Chapter 13 Plan [Dkt. No. 35].
- 6. On February 6, 2020, Dimon filed an Amended Proof of Claim in the total amount of \$51,589.15.
- 7. On February 12, 2020, Dimon filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges in the amount of \$4,785.00 for attorneys' fees paid on November 18, 2019, December 16, 2019, and January 13, 2020. Said total sum is based on attorneys' fees paid by Dimon on the dates set forth in said Notice. True and correct copies of said payments are attached hereto as **Exhibit A**.
- 8. On June 19, 2020, Dimon filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges in the amount of \$2,995.00 for attorneys' fees paid on February 10, 2020 and May 11, 2020. Said total sum is based on attorneys' fees paid by Dimon on the

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dates set forth in said Notice. True and correct copies of said payments are attached hereto as **Exhibit B**.

- 9. On June 24, 2020, the Debtor filed his Objection to Notices of Postpetition Mortgage Fees, Expenses and Charges by Dimon Homes, LLC [Dkt. No. 42] objecting to the Notices filed on February 12th and June 19th on the basis that the attorneys' fees claimed therein are excessive and unwarranted.
- 10. "Upon a debtor filing a motion to determine mortgage fees, expenses, and charges pursuant to § 1322(e), the Court must look to the underlying agreement and applicable nonbankruptcy law to determine if the amounts are permissible. The 'reasonableness standard' applied under § 506(b) challenges does not apply to postpetition fees, expenses, and charges necessary to cure a default as § 1322(e) explicitly excepts § 506(b) from consideration. Instead, the underlying agreement and applicable nonbankruptcy law are determinative. Fed. R. Bankr. P. 3002.1(e)." *In re Mandeville*, 596 B.R. 750, 754 (Bankr. N.D. Ala. 2019); citing *In re England*, 586 B.R. 795, 799 (Bankr. M.D. Ala. 2018).
- 11. Paragraph 14 of the Amended and Restated Mortgage [Claim No. 5, Part 3, p. 31] provides that Dimon may charge the Debtor for attorneys' fees for services performed in connection with Debtor's default and for purposes of protecting Dimon's interest in the Property and rights under the security instrument.
- 12. Attached hereto as **Exhibit C**, are true and correct of the invoices issued by counsel for Dimon for those attorneys' fees paid by Dimon postpetition. Dimon submits that said attorneys' fees incurred are reasonable given the work performed by Dimon's counsel as set forth in said invoices. Dimon's principal business does not involve mortgage lending and Dimon is inexperienced in the area of mortgage servicing, particularly as it pertains to default servicing. As such, counsel for Dimon was required to undertake extensive review of Dimon's payment records in order to accurate set forth the amount of debt owed by the Debtor.
- 13. "The determination of reasonableness is a matter for the trial court's discretion. Mercado v. Calumet Federal Savings & Loan Ass'n, 196 Ill.App.3d 483, 493, 143 Ill.Dec. 370, 554 N.E.2d 305, 312 (1990). The party seeking fees has the burden of presenting the court with sufficient evidence from which it can determine the reasonableness of the fees. Mercado, 196 Ill.App.3d at 493, 143 Ill.Dec. 370, 554 N.E.2d at 312. However, attorney fees may be reasonable even if the fees are disproportionate to the monetary amount of an award. In determining the reasonableness of the fee, the court may look to various factors including: (1) the skill and standing of the attorney, (2) the nature of the case, (3) the novelty of the issues involved, (4) the significance of the case, (5) the degree of responsibility required, (6) the customary charges for comparable services, (7) the benefit to the client, and (8) the reasonable connection between the fees sought and the amount involved in the litigation. Mercado, 196 Ill.App.3d at 493, 143 Ill.Dec. 370, 554 N.E.2d at 312." J.B. Esker & Sons, Inc. v. Cle-Pa's Partnership, 325 Ill. App. 3d 276, 283, 757 N.E.2d 1271, 1277 (5th Dist. 2001).
- 14. Dimon submits that it meets all criteria set forth in *J.B. Esker & Sons* for the attorneys' fees set forth in the Notices of Postpetition Mortgage Fees, Expenses and Charges to be deemed reasonable.

15. As such, the Debtor's Objection must be overruled and the Notices of Postpetition Mortgage Fees, Expenses and Charges filed by Dimon on February 12, 2020 and June 19, 2020 be allowed to stand.

WHEREFORE, Dimon Homes, LLC requests that the Debtor's Objection to Notices of Postpetition Mortgage Fees, Expenses and Charges by Dimon Homes, LLC be overruled and denied, and for such other and further relief as is just under the circumstances.

Respectfully submitted,

Dimon Homes, LLC

By: /s/ Jeffrey B. Dovitz

Cohen Dovitz Makowka, LLC Jeffrey B. Dovitz Attorney No. 6288119 10729 West 159th Street Orland Park, Il 60467 (708) 460-7711 Bankruptcy@cdm.legal 11/18/2019 Bill 11/18/2019 Bill

Cohen Dovitz Jutla Makowka, LLC

Type Reference

10453

Original Amt. 860.00

Balance Due 860.00 915.00

11/18/2019

Discount

Payment 860.00 915.00 1,775.00

Check Amount

915.00

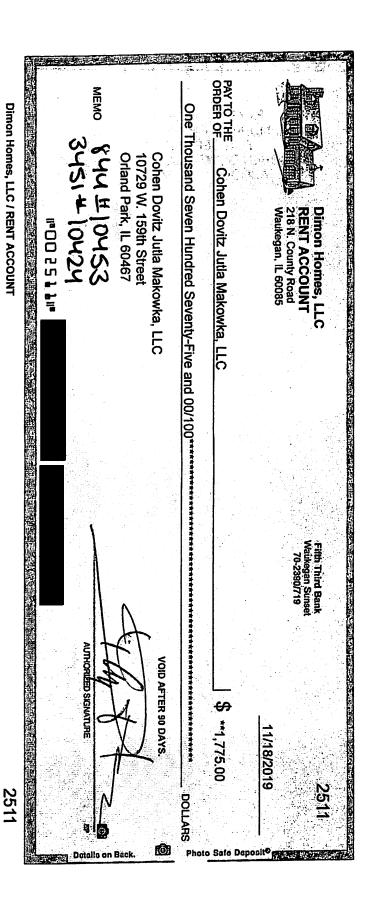
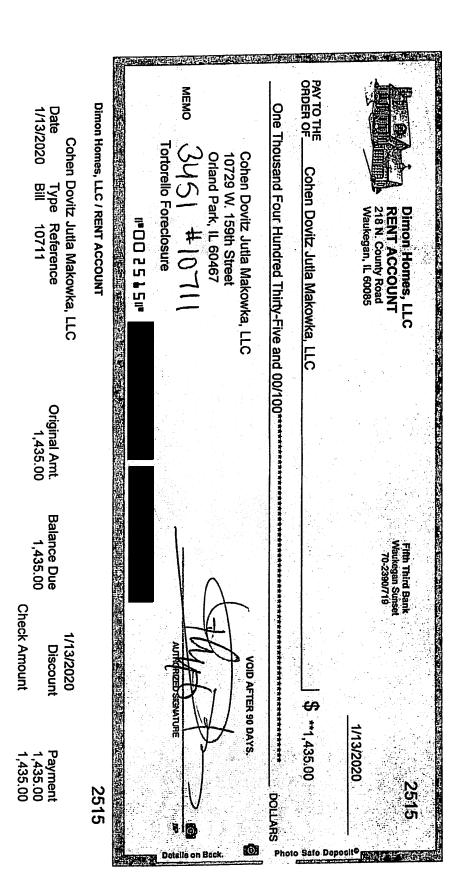


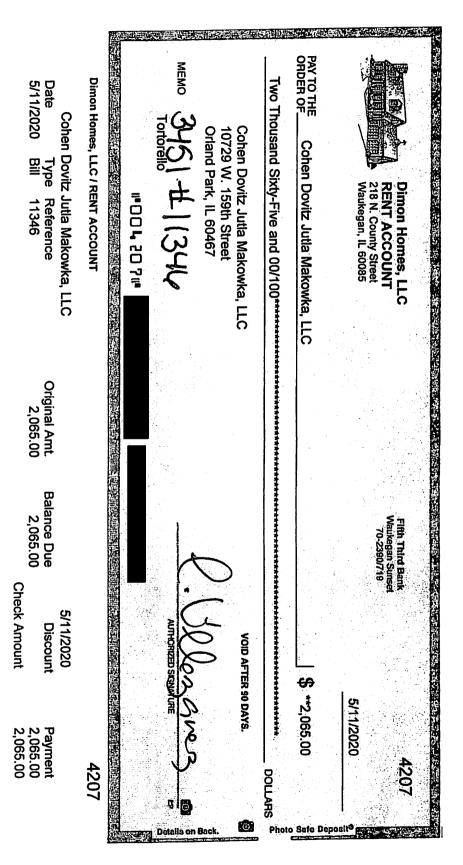
EXHIBIT A

Dimon Homes Rent x Tortorello Bankruptcy



Octails on Back

Dimon Homes Rent x Tortorello





> Invoice # 10453 Date: 10/25/2019 Due Upon Receipt

Dimon Homes, LLC 218 N. County St. Waukegan, IL 60085

00844-Dimon Homes, LLC

Dimon Homes, LLC v. Tortorello, Vincent and Jennifer; Foreclosure for Lender; Lake County Case No. 17 CH 1585; Property Address 2717 Elizabeth Ave., Zion, IL 60099

Date	Billed By	Description of Expense Incurred	Hours	Billing Rate	Total
10/18/2019	SLM	Contacted Lake County Clerk for amount necessary to redeem 2015 and 20-16 taxes; Contacted Lake County Treasurer for amount due for 2017 and 2018 unpaid installments sent email to client with amounts due and due dates; Revised Affidavit of Amounts Due.	-	\$275.00	\$440.00
10/21/2019	JBD	Revised affidavit of amounts due and owing.	1.60	\$275.00	\$440.00
10/21/2019	JBD	Phone conversation with Tim Peres regarding redemption of sold taxes and affidavit of amounts due and owing.	0.30	\$275.00	\$82.50
10/22/2019	JBD	Redeemed 2015 and 2016 sold taxes at Lake County Clerk's office.	1.00	\$275.00	\$275.00
10/23/2019	JBD	Completed drafting affidavit of prove-up, prepared exhibits for affidavit, and emailed to client for review and signature.	1.00	\$275.00	\$275.00
			Subtotal	I	\$1,512.50
			Total	ı	¢1 512 50

Total \$1,512.50

Payment (11/16/2019) -\$652.50

Payment (11/29/2019) -\$860.00

Balance Owing \$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
10453	10/25/2019	\$1,512.50	\$1,512.50	\$0.00



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> Invoice # 10424 Date: 11/01/2019 Due Upon Receipt

Dimon Homes, LLC 218 N. County St. Waukegan, IL 60085

03451-Dimon Homes, LLC

Ch 13 BK; DIMON HOMES, LLC; Debtors: Tortorello, Vincent; 19 B 30367; Related Foreclosure CDM #00844, 17 CH 1585; Trustee: Glenn Stearns; Property: 2717 Elizabeth Ave., Zion, IL 60099

Date	Billed By	Description of Expense Incurred	Hours	Billing Rate	Total
10/28/2019	JBD	Drafted and e-filed appearance for Dimon Homes.	0.30	\$350.00	\$105.00
10/28/2019	JBD	Setup file in Clio, reviewed bankruptcy docket report, and downloaded all filings of record.	0.70	\$350.00	\$245.00
10/28/2019	JBD	Reviewed bankruptcy petition, schedules, statement of current monthly income, and plan compared to prior bankruptcy filing.	0.80	\$350.00	\$280.00
10/29/2019	JBD	Email correspondence to client with filings from new bankruptcy case and comparison to prior bankruptcy filings.	0.30	\$350.00	\$105.00
10/29/2019	JBD	Email correspondence to debtor's attorney regarding errors to bankruptcy schedules and plan.	0.40	\$350.00	\$140.00
11/01/2019	AKR	Bankruptcy - Case Monitoring: Received and reviewed order continuing 341 creditors meeting, received, reviewed, and calendared Motion to Extend Automatic Stay	0.20	\$200.00	\$40.00

Subtotal \$915.00

Total \$915.00

Payment (11/29/2019) -\$915.00

Balance Owing \$0.00

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
11497	07/01/2020	\$880.00	\$0.00	\$880.00



Current Invoice

Balance Due	Payments Received	Amount Due	Due On	Invoice Number
\$0.00	\$915.00	\$915.00	11/01/2019	10424
\$880.00	Outstanding Balance			
\$0.00	Amount in Trust			
\$880.00	Total Amount Outstanding			



> Invoice # 10559 Date: 12/01/2019 Due Upon Receipt

Dimon Homes, LLC 218 N. County St. Waukegan, IL 60085

03451-Dimon Homes, LLC

Ch 13 BK; DIMON HOMES, LLC; Debtors: Tortorello, Vincent; 19 B 30367; Related Foreclosure CDM #00844, 17 CH 1585; Trustee: Glenn Stearns; Property: 2717 Elizabeth Ave., Zion, IL 60099

Date	Billed By	Description of Expense Incurred	Hours	Billing Rate	Total
11/15/2019	JBD	Appeared in court for debtor's motion to extend enforcement of stay. Due to client's objection to motion, motion set for hearing on 11/22/19. Client advised of same via email.	1.00	\$350.00	\$350.00
11/15/2019	JBD	Confirmed lack of post-petition payments and prepared for court hearing on motion to extend automatic stay.	0.50	\$350.00	\$175.00
11/20/2019	JBD	Initial draft of proof of claim and supporting documents.	1.20	\$350.00	\$420.00
11/21/2019	JBD	Phone call with Tim Peres to discuss debtor's no miss offer. Client agreed to entry of no miss order and confirmed address for payments.	0.40	\$350.00	\$140.00
11/21/2019	JBD	Email correspondence with debtor's attorney regarding no miss order.	0.20	\$350.00	\$70.00
11/21/2019	JBD	Drafted agreed no miss order to resolve objection to motion to extend the automatic stay.	1.00	\$350.00	\$350.00
11/25/2019	JBD	Email correspondence to client detailing 11/22/19 court order.	0.20	\$350.00	\$70.00

Subtotal \$1,575.00

Total \$1,575.00

Payment (01/01/2020) -\$1,575.00

Balance Owing \$0.00

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
11497	07/01/2020	\$880.00	\$0.00	\$880.00



Current Invoice

Balance Due	Payments Received	Amount Due	Due On	Invoice Number
\$0.00	\$1,575.00	\$1,575.00	12/01/2019	10559
\$880.00	Outstanding Balance			
\$0.00	Amount in Trust			
\$880.00	Total Amount Outstanding			



> Invoice # 10711 Date: 01/01/2020 Due Upon Receipt

Dimon Homes, LLC 218 N. County St. Waukegan, IL 60085

03451-Dimon Homes, LLC

Ch 13 BK; DIMON HOMES, LLC; Debtors: Tortorello, Vincent; 19 B 30367; Related Foreclosure CDM #00844, 17 CH 1585; Trustee: Glenn Stearns; Property: 2717 Elizabeth Ave., Zion, IL 60099

Date	Billed By	Description of Expense Incurred	Hours	Billing Rate	Total
12/02/2019	JBD	Email correspondence with client and debtor's counsel regarding post-petition payments.	0.20	\$350.00	\$70.00
12/10/2019	SLM	Prepared proof of claim attachment.	1.30	\$350.00	\$455.00
12/10/2019	SLM	Reviewed payment history for proof of claim attachment.	0.80	\$350.00	\$280.00
12/12/2019	JBD	Reviewed proof of claim with client via phone, prior foreclosure file, and amended and restated note and mortgage regarding prior attorney fees and costs.	0.80	\$350.00	\$280.00
12/13/2019	SLM	Filed proof of claim; Drafted and filed objection to confirmation of proposed plan.	0.80	\$350.00	\$280.00
12/23/2019	JBD	Received and reviewed trustee motion to dismiss. Emailed copy to client and docketed hearing date.	0.20	\$350.00	\$70.00

Subtotal \$1,435.00

Total \$1,435.00

Payment (01/21/2020) -\$1,435.00

Balance Owing \$0.00

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
11497	07/01/2020	\$880.00	\$0.00	\$880.00

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
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\$0.00	\$1,435.00	\$1,435.00	01/01/2020	10711
\$880.00	Outstanding Balance			
\$0.00	Amount in Trust			
\$880.00	Total Amount Outstanding	To		



> Invoice # 10873 Date: 02/01/2020 Due Upon Receipt

Dimon Homes, LLC 218 N. County St. Waukegan, IL 60085

03451-Dimon Homes, LLC

Ch 13 BK; DIMON HOMES, LLC; Debtors: Tortorello, Vincent; 19 B 30367; Related Foreclosure CDM #00844, 17 CH 1585; Trustee: Glenn Stearns; Property: 2717 Elizabeth Ave., Zion, IL 60099

Date	Billed By	Description of Expense Incurred	Hours	Billing Rate	Total
01/02/2020	AKR	Bankruptcy - Review of Plan: Review of Amended Chapter 13 Plan filed on 1/2/2020	0.20	\$50.00	\$10.00
01/02/2020	AKR	Updated Objection to Confirmation to reflect the January 2, 2020 Amended Plan	0.30	\$275.00	\$82.50
01/03/2020	AKR	Finalized objection to Amended Plan and electronically filed same	0.20	\$275.00	\$55.00
01/10/2020	JBD	Appeared in court for continued confirmation hearing, Dimon's objection to confirmation, and trustee's motion to dismiss. Case continued to 1/31/20 at 11am for continued confirmation, trustee motion to dismiss, and Dimon's objection to confirmation. Debtor to file 2nd amended plan.		\$350.00	\$350.00
01/10/2020	JBD	Email correspondence to client with court results and detailing objection to debtor's plan	0.40	\$350.00	\$140.00
01/22/2020	JBD	Reviewed amended plan and schedules filed by debtor. Email correspondence with clien regarding same.	t 0.60	\$350.00	\$210.00
01/30/2020	AKR	Drafted and filed Notice of Withdrawal of Objection to Confirmation	0.30	\$275.00	\$82.50
			Subtota	l	\$930.00

\$930.00	Subtotal
\$930.00	Total
-\$930.00	Payment (02/19/2020)
\$0.00	Balance Owing

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
11497	07/01/2020	\$880.00	\$0.00	\$880.00



Current Invoice

Balance Due	Payments Received	Amount Due	Due On	Invoice Number
\$0.00	\$930.00	\$930.00	02/01/2020	10873
\$880.00	Outstanding Balance			
\$0.00	Amount in Trust			
\$880.00	Total Amount Outstanding			



> Invoice # 11346 Date: 05/01/2020 Due Upon Receipt

Dimon Homes, LLC 218 N. County St. Waukegan, IL 60085

03451-Dimon Homes, LLC

Ch 13 BK; DIMON HOMES, LLC; Debtors: Tortorello, Vincent; 19 B 30367; Related Foreclosure CDM #00844, 17 CH 1585; Trustee: Glenn Stearns; Property: 2717 Elizabeth Ave., Zion, IL 60099

Date	Billed By	Description of Expense Incurred	Hours	Billing Rate	Total
02/03/2020	JBD	Phone call with Tim Peres and Sandy Makowka regarding application of payments before and after bankruptcy filing. Discussed application of pre and post-petition to client's general ledger and application of arreage payments to be made by the trustee.		\$350.00	\$350.00
02/03/2020	SLM	Phone call with Tim Peres and Jeff Dovitz regarding application of payments before and after bankruptcy filing. Discussed application of pre and post-petition to client's general ledger and application of arreage payments to be made by the trustee.	1.00	\$350.00	\$350.00
02/06/2020	SLM	Reviewed client's payment ledger; Prepared updated proof of claim worksheet and amended claim; Filed Amended Proof of Claim and Claim Attachment; Prepared payment history with post-petition insurance expenses incurred and payments received.	2.50	\$350.00	\$875.00
02/06/2020	SLM	Prepared Notice of Post-Petition Fees.	0.30	\$350.00	\$105.00
02/07/2020	SLM	Received and responded to email from client regarding discrepancies between client figures and POC.	0.40	\$350.00	\$140.00
02/12/2020	SLM	Prepared and Filed Notice of Filing Notice of Post-Petition Fees.	0.20	\$350.00	\$70.00
02/14/2020	SLM	Call with client regarding application of post-petition payments and discrepancies in accounting due to prior bankruptcy filing and arrearage.	0.50	\$350.00	\$175.00
			Subtota	l	\$2,065.00
			Tota	1	\$2,065.00

Detailed Statement of Account

Other Invoices

-\$2,065.00

\$0.00

Payment (06/19/2020)

Balance Owing

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Invoice Number	Due On	Amount Due	Payments Received	Balance Due
11497	07/01/2020	\$880.00	\$0.00	\$880.00

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
11346	05/01/2020	\$2,065.00	\$2,065.00	\$0.00
			Outstanding Balance	\$880.00
			Amount in Trust	\$0.00
			Total Amount Outstanding	\$880.00